IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/10/2003

C O R A M

THE HONOURABLE Mr.JUSTICE P.K.MISRA

Writ Petition No. 3197 of 2002

S. Jaya Jaya Bhuvaneswari ... Petitioner

-Vs-

1. The General Manager
(Operation)
Tamil Nadu Government
Transport Corporation
(Villupuram Division - I) Limited
Villupuram 605 602.

2. The Selection Grade
Assistant Manager (Personnel)
Tamil Nadu Government
Transport Corporation)
(Villupuram Division - I) Limited
Villupuram 605 602. ... Respondents.

Petition filed under Article 226 of the Constitution of India
praying for issue of a writ of certiorarified mandamus as stated therein.

!For petitioner ... Mr.S.Periasamy

^For respondents ... Mr.S.Jayaraman.

:O R D E R

Heard counsels appearing for the parties.

2. The petitioner has prayed for issue of a writ of
certiorarified mandamus for quashing the order dated 18/12/2002 in proceeding No.1 4293/Ni.7/TNGTC (V.DN.1)/99 and order dated 28/1/2002 in proceeding No. 14293/Ni.7/TNGTC (VPM.DVN.1)/99 and to issue a direction to the respondent to register the petitioner as a casual labour (Administrative work) under the respondent Corporation and to regularise her services with all monetary and

attendant benefits.

3. It is not disputed that the father of the petitioner was working under respondent No.1 Corporation and while in service, he expired on 18/7/1999. As a matter of fact, the mother of the petitioner also died in the very same motor accident on the very same date and the petitioner became an orphan. The petitioner who is a science graduate in mathematics, applied to the respondents for appointment on compassionate ground. Appropriate application was filed on 4/10/1999 and on 19/11/1999, the respondent directed the petitioner to appear before the Assistant Manager (Personnel) to produce the relevant certificates. Subsequently, the petitioner was again directed to appear for an interview on 17/7/2000 and at that stage, the respondent took the decision to appoint the petitioner on compassionate ground as a casual labour (Administrative work) on payment of Rs.60/- per day. Accordingly, the petitioner joined with effect from 19/7/2000 in a clerical capacity.

4. According to the respondent, the initial appointment is only for 59 days and subsequently, the petitioner was allowed to continue with an artificial break of one or two days. The petitioner got married on 24/8/2001. Thereafter, from 15/9/2001, the petitioner was not given any employment. A representation was made by the petitioner. The reply dated 18/12/2001 was not positive. Thereafter, a notice was issued on behalf of the petitioner through the Advocate and a reply dated 28/1/2002 was sent by the employer, wherein, again it was indicated that since she was married, she could not be treated as a legal heir of her father to seek appointment on compassionate ground.

5. The present writ petition has been filed for quashing the aforesaid two communications and for giving direction regarding the employment of the petitioner.

6. In counter affidavit, it has been indicated that "since the petitioner had got married on 24/8/2001, she could not be continued to be engaged in view of the prohibition as per G.O.Ms.No. 680 Transport Department dated 23/12/1977".

7. From the counter affidavit as well as from the correspondence, it is apparent that merely because the petitioner who was unmarried at the time of appointment, got married subsequently, her services were terminated.

8. In course of hearing this writ petition, a reference had been made to G.O.Ms.No. 680 Transport dated 28/12/1997. The said G.O. envisages appointment of dependance of the deceased employee on compassionate ground under the State Transport Corporation and Engineering Corporations. Clause 5 of the said G.O is to the following effect:-

"Member of the Family" is defined and restricted to include only the wife/husband/son/unmarried daughter of the employee who dies in

harness. Cases of near relatives such as brothers/sisters etc., of the deceased employee should be excluded".

9. From the aforesaid, it is obvious that at the time of employment, only an unmarried daughter would be eligible to get appointment on compassionate ground. This is because the intention at that stage is to provide employment to the members of the needy family and a married daughter is not normally considered as a dependent member of the family of the deceased person. However, the G.O. nowhere says that if an unmarried daughter gets job, she can't get married in future. In fact, if any such condition would be incorporated, such condition may violate Article 15 and Article 21 of the Constitution of India. While considering the question of appointment, the eligibility is supposed to be considered on the date of application. Even the G.O.Ms. No. 680 contemplates that,

"the dependents who in most cases are likely to be appointed initially on temporary or daily-rated basis, should be given their normal place in the list of seniority and they can be ousted for want of vacancy strictly according to this list".

In other words, the G.O. does not contemplates that if somebody gets married subsequently that would be the ground of terminating the services.

10. For the aforesaid reasons, I am of the opinion that the termination of the services of the petitioner on the ground that she got married cannot be sustained in law and it would be deemed, as if there is no termination and she was continuing in the same capacity before the termination as casual labour. However, keeping in view the facts and circumstances, the back wages may not be paid for the aforesaid period. The question of

regularisation of services of the petitioner should be considered in accordance with the relevant facts and circumstances as and when regular vacancies arise in future.

11. In the course of hearing, it was brought to my notice that the petitioner was being paid at the rate of Rs.60/- per day whereas minimum wages payable now-a-days is higher. It goes without saying in future, the petitioner would be paid the minimum wages payable. This order may be implemented within four weeks from the date of receipt of this communication.

12. Subject to the above said observation and direction, the writ petition is disposed of.

Index: Yes

Internet: Yes

mvs.

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